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EXAMINER

STANLEY, JANE L

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1796

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Response to Arguments

Applicant's arguments filed **06 February 2009** have been fully considered but they are not persuasive and furthermore, as the proposed amendments filed 06 February 2009 will require further search and/or consideration they have not been entered.

Regarding Applicant's "Exhibit A", it is unclear why Applicant is arguing that the compatibility of ethylene glycol with elastomeric materials at temperatures above 80 °C results in it being "surprising that an aqueous solution containing trimethyl glycine can be used in very demanding engine applications, such as combustive engines without any problems" (Applicant's arguments page 6). The compatibility of ethylene glycol with elastomeric materials does not appear to have any bearing on the use of aqueous solutions of trimethyl glycine in an engine with or without any "problems". If Applicant is attempting to demonstrate that the instant invention is in some way unexpected, a comparison of the instant invention with the closest prior art would be required.

Regarding Applicant's arguments directed toward the 102(b) rejection of **claims 1-3, 5-6, and 8-9** as anticipated by Masuada et al. (US 1,901,111) **as evidenced by** Ilves et al. (WO 97/31988). It is noted that Ilves et al. was used as an **evidentiary** reference only to demonstrate that the "betaine" of Masuada et al. is known to be trimethyl glycine (Ilves et al. page 3 In 25-26).

Regarding Applicant's arguments directed toward the 103(a) rejection of **claim 4** as unpatentable over Masuada et al. (US 1,901,111) **as evidenced by** Ilves et al. (WO 97/31988) and in view of Oppenländer (DE 19830819). It is again noted that Ilves et al

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was used as an **evidentiary** reference to demonstrate that the "betaine" of Masuada et al. is known to be trimethyl glycine (Ilves et al. page 3 In 25-26). Oppenländer was used as a modifying reference to modify Masuada et al. and not Ilves et al..

Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JANE L. STANLEY whose telephone number is (571)270-3870. The examiner can normally be reached on Monday-Thursday, 7:30 am - 5 pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/

Supervisory Patent Examiner, Art Unit 1796

/JLS/